FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-152

SCOTT GILBERT GREY KEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Lacey Powell Clark, Judge.

February 10, 2021

PER CURIAM.

Scott Gilbert Grey Key, Appellant, pleaded no contest to two counts of possession of a controlled substance and one count of possession of drug paraphernalia, and he reserved the right to appeal the denial of a motion to suppress evidence. Appellate counsel originally filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). After reviewing the record, this Court ordered supplemental briefing on the following issues: whether placing Appellant in handcuffs and in the back of the patrol car escalated the detention to an impermissible *de facto* arrest; and to what extent this possible *de facto* arrest would require exclusion of inculpatory evidence such that the denial of the motion to suppress constitutes reversible error. We now affirm the trial court's denial of the motion to suppress, finding that although Appellant's

detention amounted to a *de facto* arrest, the evidence was admissible under the inevitable discovery doctrine.

I.

Officer Ellerbee conducted a traffic stop after he observed Appellant traveling in a continuous left median lane for approximately 250 feet before turning left. The K-9 officer, Officer Khune, was following behind. Both Officers Ellerbee and Khune described the Appellant as extremely nervous when they approached his vehicle. Appellant was sweating and shaky with a strong pulse in his neck. Appellant was asked to produce his driver's license and proof of insurance. While Appellant was looking for his identification, both officers noticed a cell phone on top of Appellant's left leg. The cell phone had an active text on the screen showing a picture of a large quantity of methamphetamine on a scale. Based on this observation and Appellant's behavior, Officer Ellerbee asked Appellant to exit the vehicle. Appellant consented to a pat-down search, which was conducted without incident, after which Officer Ellerbee handcuffed Appellant and placed him in his patrol car. Officer Ellerbee then stayed in the patrol car with Appellant while preparing a traffic warning, and Officer Khune deployed the K-9, who alerted to the vehicle.

Appellant filed a motion seeking to suppress the evidence obtained from the search. The trial court denied the motion, finding Appellant had been lawfully detained. Although we disagree that Appellant was lawfully detained, we ultimately affirm denial of the motion on other grounds.

II.

A trial court's ruling on a motion to suppress comes to this Court with a presumption of correctness. *State v. Markus*, 211 So. 3d 894, 902 (Fla. 2017). Findings supporting a ruling on a motion to suppress are reviewed for competent, substantial evidence, and all evidence must be viewed in the light most favorable to sustaining the court's ruling. *Scott v. State*, 151 So. 3d 567, 573 (Fla. 1st DCA 2014). Conclusions of law are reviewed *de novo*. *Id.*

The first issue is whether the handcuffing and placing of Appellant in the patrol car constituted an illegal detention or

arrest, which preceded the discovery of the drugs and drug paraphernalia. "[A]n arrest must be supported by probable cause that a crime has been or is being committed." *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993) (citing *Henry v. United States*, 361 U.S. 98 (1959)). "The use of handcuffs does not automatically turn an investigatory stop into a de facto arrest." *Studemire v. State*, 955 So. 2d 1256, 1257 (Fla. 4th DCA 2007) (citing *Reynolds v. State*, 592 So. 2d 1082, 1085 (Fla. 1992)). Rather, "police may properly handcuff a person whom they are temporarily detaining when circumstances reasonably justify the use of such restraint." *Reynolds*, 592 So. 2d at 1085. The court in *Reynolds* explained:

> We do not suggest that police may routinely handcuff suspects in order to conduct an investigative stop. Whether such action is appropriate depends on whether it is a reasonable response to the demands of the situation. When such restraint is used in the course of an investigative detention, it must be temporary and last no longer than necessary to effectuate the purpose of the stop. The methods employed must be the least intrusive means reasonably available to verify or dispel in a short period of time the officers' suspicions that the suspect may be armed and dangerous. Absent other threatening circumstances, once the pat-down reveals the absence of weapons the handcuffs should be removed.

Id. (internal citation omitted). "The test for evaluating an officer's acts based on concern for safety is not the officer's subjective thoughts, but the rational inferences that a reasonable prudent person would draw under the circumstances." *Studemire*, 955 So. 2d at 1258.

In *Williams v. State*, 993 So. 2d 1179 (Fla. 4th DCA 2008), the Fourth District addressed a similar fact pattern. In *Williams*, the officer stopped a car for speeding. *Id.* at 1180. The two men in the car appeared nervous and had red, bloodshot eyes. *Id.* After it was discovered that the driver had a suspended license and after a brief struggle, he was arrested. *Id.* Williams was the owner of the car and had a valid driver's license. *Id.* A pat-down of Williams uncovered a wallet in his back pocket and a large amount of cash on his ankle. *Id.* The officer then informed Williams that he was

being detained and placed him in handcuffs. *Id.* at 1181. The court concluded that the handcuffing of the appellant constituted an improper seizure, noting that Williams was stopped for a traffic violation, which is not typically associated with firearms, and a pat-down conducted prior to the handcuffing revealed no weapons. *Id.*

Here, there is no indication that the officers feared for their safety under the circumstances. Appellant was pulled over for a traffic infraction, which is not typically associated with weapons. Appellant obeyed the officers' commands and did not indicate an intent to flee. The officers noted that Appellant attempted to turn while he was being handcuffed, but they thought this was likely due to his nervousness. Additionally, a pat-down was conducted that revealed no weapons. Further, there is nothing in the record to indicate that Appellant was close enough to the vehicle to retrieve a weapon or that he was a flight risk.

Under these facts, Appellant's detention was converted to an arrest for which the officers lacked probable cause because the contraband had yet to be discovered. *See id.*; *see also Reynolds*, 592 So. 2d at 1086 (finding that although the initial handcuffing of the defendant was appropriate, the continued use of handcuffs after a pat-down was illegal where the officers had no reason to believe weapons were present and the defendant was cooperative and did not make any threats).

However, we find the evidence admissible under the inevitable discovery doctrine, which is an exception to the exclusionary rule. *See Rodriguez v. State*, 187 So. 3d 841, 845 (Fla. 2015). Under the inevitable discovery doctrine, "evidence obtained as the result of unconstitutional police procedure may still be admissible provided the evidence would ultimately have been discovered by legal means." *Id.* (quoting *Fitzpatrick v. State*, 900 So. 2d 495, 514 (Fla. 2005)). The "[p]urpose of the inevitable discovery rule," i.e. that evidence would ultimately or inevitably have been discovered notwithstanding constitutional violation, "is to block setting aside convictions that would have been obtained without police misconduct." *Nix v. Williams*, 467 U.S. 431, 443 n. (1984). "In other words, the case must be in such a posture that the facts already in the possession of the police would have led to this

evidence notwithstanding the police misconduct." *Rodriguez*, 187 So. 3d at 846 (quoting *Fitzpatrick*, 900 So. 2d at 514). The State is required to show that "at the time of the constitutional violation an investigation was already underway"; thus, where there was no ongoing investigation and the prospect of eventual discovery is speculative, the doctrine does not apply. *Id.*

In this case, Appellant was validly stopped by Officer Ellerbee with Officer Khune closely behind. When both officers approached the vehicle and observed Appellant's demeanor and the picture on his phone, the investigation essentially began. Officer Khune would have conducted a K-9 search of the vehicle, while Officer Ellerbee was writing the traffic warning, whether Appellant had been unlawfully detained or not. The only change that would have occurred had there not been an illegal detention was that Appellant would not have sat handcuffed in the back of the patrol car during the search. Thus, discovery of the drugs and drug paraphernalia was inevitable, and the fact that the *de facto* arrest occurred prior to the officers having probable cause is irrelevant. Therefore, the evidence would have been admissible and not subject to exclusion. *See Cummings v. State*, 956 So. 2d 559, 560 (Fla. 5th DCA 2007) (holding evidence that was obtained after a traffic stop admissible under the inevitable discovery doctrine where the officer had a legal right to stop the vehicle and ask the defendant for his driver's license, which would have inevitably led to the discovery of his suspended license). The trial court correctly denied the suppression motion.

We, therefore, affirm Appellant's judgment and sentence.

AFFIRMED.

KELSEY, M.K. THOMAS, and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Lori Willner, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, Tallahassee, for Appellee.